

A vote Aye is a vote in favor of the Amendment No. 3 to strike the word exclusively. A vote No is a vote against.

Cast your votes.

Has every delegate voted? Does any delegate desire to change his vote?

*(There was no response.)*

The Clerk will record the vote. There being 44 votes in the affirmative and 73 in the negative, the motion is lost. The amendment is rejected.

Is there any other amendment to section 5.01?

*(There was no response.)*

THE CHAIRMAN: Is there any amendment to section 5.03?

*(There was no response.)*

THE CHAIRMAN: Is there any amendment to section 5.04?

*(There was no response.)*

THE CHAIRMAN: Is there any amendment to section 5.05?

Delegate Singer.

DELEGATE SINGER: Excuse me, Mr. President. There was an amendment to 5.03 being prepared. I do not know whether it is ready yet.

THE CHAIRMAN: Has it been printed?

DELEGATE SINGER: I do not know that, sir.

THE CHAIRMAN: It has not yet been printed.

We will proceed and come back to section 5.03.

The Chair heard no amendment to section 5.05, is that correct?

Section 5.06. There is an amendment proposed by Delegate Bamberger, is that right?

DELEGATE BAMBERGER: Yes, sir.

THE CHAIRMAN: The pages will please distribute the amendment. This will be Amendment No. 4.

I am sorry. Since there is an amendment to be offered to 5.03, please mark that Amendment No. 5.

The Clerk will read the amendment.

READING CLERK: Amendment No. 5 to Committee Recommendation JB-1, by

Delegate Bamberger: On page 2 Section 5.06 titled Composition of Intermediate Appellate Court in line 39 strike out the words "as prescribed by rule".

THE CHAIRMAN: Is the amendment seconded?

*(Whereupon, the amendment was duly seconded.)*

THE CHAIRMAN: The amendment having been seconded, the Chair recognizes Delegate Bamberger to speak for the amendment.

DELEGATE BAMBERGER: Section 5.06 authorizes the General Assembly to establish the number of judges, five but not less than five or more judges who will sit on the intermediate appellate court. The General Assembly may decide there may be six or eight or any number of judges in excess of five.

The next section, 5.06, does not give the General Assembly, but gives only the highest court, the Court of Appeals, the power to say, we have six judges there. They need not all six sit together in any one case. The business of that court is such that they ought to divide into panels, let's say, of three, and the constitution or the proposed section 5.06 does say that the panels, the divisions of the court, should be not less than three.

The purpose of the amendment is to give also, not exclusively, but to give also to the General Assembly the right to say when it establishes the number of judges that these judges shall sit in panels.

I am concerned that the General Assembly might say there ought to be nine judges in order to take care of the business of the court, but if all nine sat together they would never take care of that business. They would take care of that business if they sat in panels of three so that in effect you really would have three courts, possibly three panels of three operating at any one time.

The amendment accomplishes this by striking out those words on line 39 in section 5.06 which say that the Court of Appeals not the intermediate appellate court, but the highest court can by its rule set up the panel. Then, as I understand it, the last section of the Committee's proposal, which is section 5.31, would be operative in that it says "except as to matters specifically provided to be taken care of by rule". Then both the Court of Appeals and the General Assembly would have the